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October 27, 1998

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Ms. Kathryn C. Brown
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20036

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Ex Parte in CC Docket No. 98-79, GTE Telephone Operating
Companies, GTOC Tariff FCC No. 1, GTOC Transmittal No. 1148;
CC Docket No. 98-103, Pacific Bell Telephone Company, Pacific Bell Tariff
FCC No. 128, Transmittal No. 1986;
CC Docket No. 98-161, Bell South Telecommunications, Inc., BellSouth
Tariff FCC No. 1, BellSouth Transmittal No. 476;
CC Docket No. 98-167, GTE System Telephone Companies, GSTC FCC
Tariff No. 1, GSTC Transmittal No. 260;
CC Docket No. 98-168, Bell Atlantic Telephone Companies, Bell Atlantic
Tariff No. 1, Bell Atlantic Transmittal No. 1076.**

Dear Ms. Brown:

Many of the parties participating in the GTE ADSL tariff investigation have focused on the question of whether Internet-related uses of ADSL are jurisdictionally interstate or intrastate. As MCI WorldCom has demonstrated, however, the Commission need not, and should not, address Internet-related jurisdictional issues in this proceeding.¹ The question designated for investigation in this proceeding is whether GTE's ADSL service is properly tariffed in the interstate jurisdiction,² not whether one particular use of ADSL

¹MCI WorldCom Comments on Direct Cases, CC Docket No. 98-79; CC Docket No. 98-103; CC Docket No. 98-161, filed September 18, 1998.

²GTE Telephone Operating Companies, GTOC Tariff FCC No. 1, GTOC Transmittal No. 1148, Order Designating Issues for Investigation, released August 20, 1998, at ¶12. ("The threshold issue raised by GTE's tariff and the petitioners is whether GTE's DSL service offering is an interstate service, properly tariffed at the federal level, or an intrastate service that should be tariffed at the state level. . . . We, therefore, designate for investigation the question whether GTE's DSL service offering is a

-- connecting end users to an Information Service Provider's Point of Presence (POP) in the same local calling area -- is interstate or intrastate. The latter question is wholly separate from the question designated for investigation, and should therefore be addressed, if at all, in a separate proceeding.

The Commission Need Not Address Internet-Related Jurisdictional Issues

The Commission need not address Internet-related jurisdictional issues in this proceeding because there is nothing inherently "Internet-related" about the ILECs' ADSL services. As discussed in more detail below, Internet access is only one of the many uses of the ILECs' ADSL services. Jurisdictional analysis of the non-Internet related uses of the ILECs' ADSL services is straightforward, and shows that some of these uses are interstate. Thus, the Commission can answer the question designated for investigation -- whether GTE's DSL service offering a jurisdictionally interstate service -- without considering Internet-related uses of ADSL at all.

The starting point for the Commission's analysis should be the observation that ADSL is just a transmission technology. Like the well-known T1 technology or any other transmission technology, ADSL's use is not limited to any particular type of communication. Just as T1 links can be used to transmit voice, video, frame relay packets, ATM cells, or Internet packets, ADSL-equipped links can be used to transmit voice, video, frame relay packets, ATM cells, or Internet packets. The best evidence of the versatility of ADSL is the fact that ADSL first came to the attention of the Commission's attention as a technology for providing "video dialtone" services.³

The record in this proceeding confirms that the ILECs' ADSL services are not restricted to Internet-related applications. First, none of the ILECs disputed MCI WorldCom's observation, made in its Comments on the ILECs' Direct Cases, that "the ILECs' tariff language does not limit their ADSL services to Internet-related applications."⁴ Second, BellSouth confirmed in its Direct Case that its ADSL service may be used in a "wide range of data and information service applications that [service providers] offer directly to end users."⁵ Third, GTE, in the Description and Justification portion of Transmittal No. 1048, stated that GTE "will be providing access to the necessary network functions

jurisdictionally interstate service.")

³See, e.g., In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, Second Annual Report, 11 FCC Rcd 2060, 2149-2150 (1995).

⁴MCI WorldCom Comments on Direct Cases at 11.

⁵BellSouth Direct Case at 2.

and equipment, on a nondiscriminatory basis, to enable an ISP, CLEC, IXC or any other entity to market and provide commercial ADSL service to their customers.”⁶ Fourth, Bell Atlantic acknowledged in its Direct Case that “there may be other uses of Bell Atlantic’s DSL. . . .”⁷ Finally, the Public Utilities Commission of Ohio stated in its Comments that “[i]t is important for the FCC to recognize that, although its ADSL service will be used to connect to ISPs, the service actually has much broader applications.”⁸

Furthermore, all evidence indicates that the non-Internet related applications of ADSL are significant. While GTE states that it “believes dedicated ADSL will be overwhelmingly used to provide . . . Internet access,” and the other ILECs also emphasize the Internet-related applications of ADSL, this is nothing more than an unsupported prediction made by their marketing departments. Sprint’s description of its plans to use ADSL, outlined in its petition to suspend and investigate Pacific Bell’s ADSL tariff, demonstrates that the scope of application for ADSL is much broader. In its petition, Sprint states that it plans to use ADSL to provide access to its Integrated On-Demand Network (ION), a new service that will provide “virtually unlimited bandwidth over a single existing telephone line for simultaneous voice, video, and data services” to both business and residential customers.⁹

One example of a use of the ILECs’ ADSL services that has nothing to do with the Internet is shown in the first drawing on the attached figure. In this example, an IXC provides a frame relay service connecting corporate locations, such as a company’s headquarters and branch office, in different states. Today, the company’s headquarters and the branch office would typically be connected to the IXC’s frame relay POP through a dedicated access facility such as a T1 line. For some locations, however, ILEC ADSL services may provide a cost-effective alternative to T1 lines.¹⁰ The attached figure shows

⁶GTOC Transmittal No. 1148, Description and Justification at 2. BellSouth makes a similar statement in its Direct Case at 2 n.2.

⁷Bell Atlantic Direct Case at 3 n.3.

⁸Opposition of the Public Utilities Commission of Ohio at 6, September 17, 1998, CC Docket No. 98-79 (“Most LECs have been selling their ADSL service not just to connect to ISPs, but also for residential and small business customers to connect to Enhanced Service Providers and other data networks, such as corporate LANs.”)

⁹Pacific Bell Telephone Company, Tariff FCC No. 128, Transmittal No. 1986, Petition of Sprint to Suspend and Investigate, June 22, 1998, at 2-3.

¹⁰GTE, for example, offers ADSL at 384 kbps upstream/384 kbps downstream bandwidth, which could be more cost effective than a T1 line (1.544 Mbps bandwidth in both directions) at locations with lower traffic volumes.

the branch office connected to an IXC POP using ILEC ADSL service.

The jurisdictional analysis of this service configuration is straightforward. It is well-established that frame relay is a telecommunications service,¹¹ and it is also well-established that jurisdiction over a telecommunications service is determined by the origination and termination points of the telecommunications service.¹² If the endpoints of the frame relay service -- the corporate headquarters and the branch office -- are in different states, the service is interstate and subject to the Commission's jurisdiction. The ADSL service between the branch office and the IXC POP is then providing "origination and termination" of an interstate telecommunications service, and is therefore considered an interstate "access service" under Section 69.2(b) of the Commission's rules.¹³

Thus, without addressing Internet-related jurisdictional issues, the Commission can conclude that the ILECs' ADSL services can be used to provide interstate access and are therefore properly tariffed at the federal level. No further analysis is necessary to answer the question designated for investigation -- "whether GTE's DSL service is a jurisdictionally interstate service."

It is worth pointing out, however, that the ILECs' ADSL services also have intrastate uses and are therefore properly tariffed at the state level as well. Some ILECs have, in fact, already tariffed ADSL at the state level.¹⁴ The most obvious example of an intrastate application of ADSL services is a "work at home" application. If an ILEC ADSL service were used to connect end users to an office in the same local calling area, then the ADSL service would be considered a local telecommunications service and would properly be tariffed in the ILEC's local tariff. ADSL could also have intrastate access applications: in the IXC frame relay service example discussed above, ADSL would be providing intrastate access if the headquarters and branch office were in the same state.

The conclusion that ILEC ADSL services should be tariffed as local services, intrastate access services, and interstate access services should not be surprising, given that ADSL is just a transmission technology. Other transmission technologies, such as T1 or voice grade lines, are offered under local, intrastate access, and interstate access tariffs. Indeed, ADSL's cousin, HDSL, has been used by the ILECs for many years to provide local,

¹¹Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147, released August 7, 1998 (Advanced Services Notice) at ¶35 and n.57.

¹²NARUC v. FCC, 746 F.2d 1492, 1498-1499 (1984).

¹³47 C.F.R. §69.2(b).

¹⁴See Pacific Bell Direct Case at 2.

intrastate access, and interstate access services.¹⁵ There is no reason to expect that ADSL should be tariffed any differently.

Even the ILECs recognize that ADSL is not inherently interstate or intrastate. Pacific Bell acknowledged in its Direct Case that “[l]ike other transmission services and technologies, jurisdiction over ADSL service does not inherently reside within one jurisdiction or the other.”¹⁶ ADSL is just a transmission technology; of its many uses, some could be interstate while others could be intrastate. To answer the question designated for investigation, the Commission need not determine whether Internet access is an interstate use or an intrastate use.

The Commission Should Not Address Internet-related Jurisdictional Issues in this Proceeding

Not only is there no need for the Commission to address Internet-related issues in this proceeding, but it is clear that the Commission should not address Internet-related issues in this proceeding. The Commission would be reaching beyond the narrow question designated for investigation -- whether the ILECs’ ADSL tariffs are properly tariffed at the federal level -- to address a wholly separate, potentially far-reaching, and complex question -- whether the use of ADSL to connect an end user to an ISP POP in the same local calling area is an intrastate or interstate use.

In the past, the Commission has addressed this type of question -- whether a particular use of a service is interstate or intrastate -- in a rulemaking, a declaratory ruling, or a complaint proceeding, not at the tariffing stage. For example, the Commission addressed in a declaratory ruling the question of whether private lines used in the New York State Lottery’s network should be purchased from interstate or intrastate tariffs.¹⁷

The Commission should conclude this investigation by simply finding that the ILECs’ ADSL services are properly tariffed in the interstate jurisdiction, without addressing the

¹⁵While HDSL is not tariffed as a distinct “HDSL service” because its performance characteristics appear to the user to be identical to those of T1 services, many of the “T1” services that are sold from local private line, intrastate special access, and interstate special access tariffs are actually HDSL.

¹⁶Pacific Bell Direct Case at 2.

¹⁷Petition of the New York Telephone Company for a Declaratory Ruling with Respect to the Physically Intrastate Private Line and Special Access Channels Utilized for Sales Agents to Computer New York State Lottery Communications, Memorandum Opinion and Order, 5 FCC Rcd 1080 (1990).

Internet-related jurisdictional issue. If, after customers begin ordering ADSL from the ILECs, a dispute arises concerning whether a customer's service configuration involves an interstate or intrastate use of ADSL, then the ILEC or its customer can seek a declaratory ruling or file a complaint. The Commission's evaluation of the issue would then be based on an actual, rather than hypothetical, service configuration and would not be subject to the accelerated timetable of a tariff investigation.

Moreover, a tariff proceeding is not the right place for the Commission to make a ruling that, as the Commission is well aware, could have far-reaching consequences for the interstate access charge regime and for local competition. Tariff investigations are conducted under an accelerated schedule and with significantly less public involvement, and thus a less complete record, than a typical notice and comment proceeding. The schedule for this proceeding has been even more compressed than usual for a tariff investigation because the Commission allowed only slightly more than two months between the release of the GTE Designation Order and the October 30th statutory deadline. In fact, the comment cycle closed only a month ago, on September 23rd.

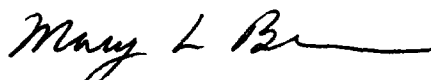
Of particular concern in this tariff proceeding, given its jurisdictional implications, is the fact that the accelerated schedule appears to have precluded state commissions -- which have an obvious direct interest in the outcome -- from participating or from filing extensive comments. Only a handful of state commissions filed comments on the GTE Direct Case.¹⁸ The complex jurisdictional questions concerning Internet traffic should be addressed in a proceeding in which state commissions have a full opportunity to participate.

¹⁸Only the Texas, Ohio, Oregon, and North Carolina state commissions filed comments.

Conclusion

The Commission should conclude this investigation by finding that the ILECs' ADSL service offerings are properly tariffed as interstate access services (but may also be tariffed as local services and intrastate access services). The Commission can reach this conclusion without needing to address the wholly separate issue of whether one particular use of ADSL services -- connecting ISP end users to other end users -- is interstate or intrastate in nature. The Commission should not reach beyond the question presented for investigation to address Internet-related jurisdictional issues in this proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary L. Brown", with a long horizontal flourish extending to the right.

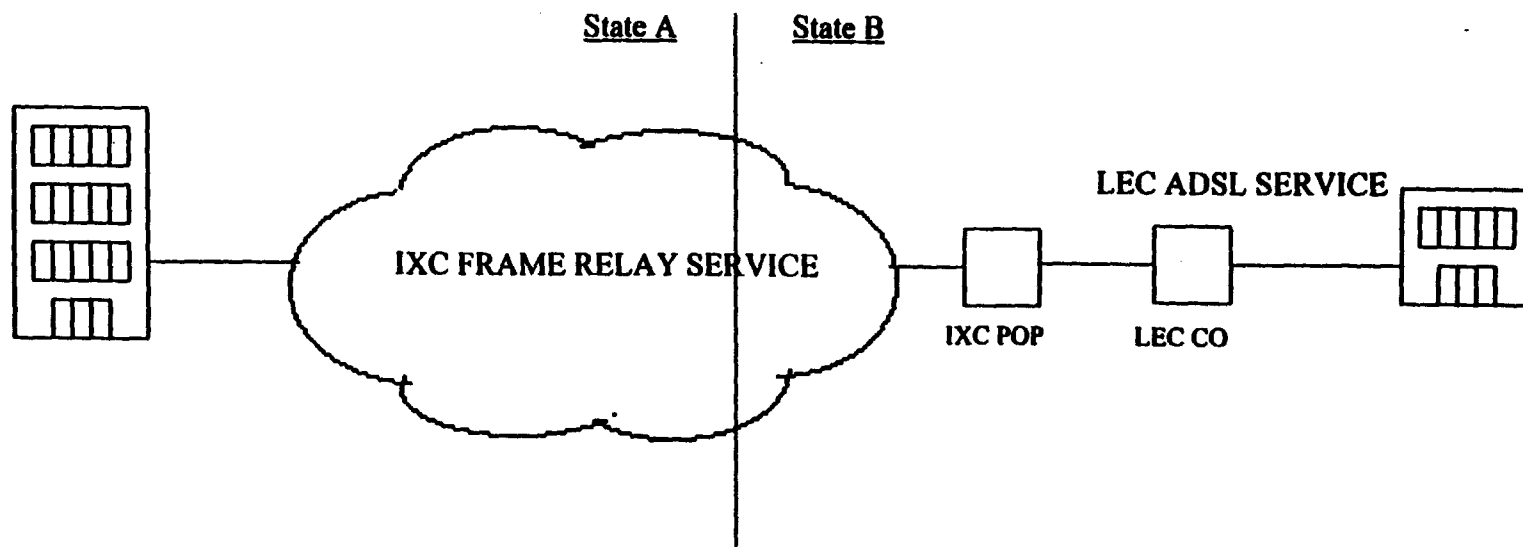
Mary L. Brown

cc: Tom Power
Paul Gallant
Kyle Dixon
Kevin Martin
Jim Casserly

Jane Jackson
Rich Lerner
Tamara Preiss

ADSL Has Both Interstate Applications . . .

(e.g., as part of an interstate packet-switched telecommunications service connecting a company's head office and branch office locations)



. . . and Intrastate Applications

(e.g., as part of a "work at home" service)

